

### **REMARKS**

Claims 1, 15 and 21 have been amended. Claims 6, 7, 18, 19 and 20 have been canceled. Hence, claims 1-5, 8-17, and 21-28 remain active and under consideration in this application.

### **REQUEST FOR RECONSIDERATION**

#### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1-3, 5, 8-9, 11, 13-18, 21-23, 25 and 27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bennett et al. (U.S. Patent No. 6,633,846). In view of the amendments above, this ground of rejection is not sustainable and should be withdrawn.

With respect to claim 1, and the remaining claims dependent therefrom that stand rejected as anticipated by Bennett et al. (claims 2-3, 5, 8-9, 11, and 13-14; see paragraph 1 of the Action), the Action itself concedes, in paragraph 15 thereof, that Bennett et al. fails to disclose a server having business logic enabling the user to write prescriptions electronically. The Action further concedes, in paragraph 16 thereof, that Bennett et al. fails to specifically disclose that the searchable data information includes stored prescription-related information. Claim 1, as presently amended, now recites that the server has business logic enabling the user to write prescriptions electronically and that the searchable data information includes stored prescription-related information. Because Bennett et al., by the Action's own admission, does not disclose those two claimed features, claim 1 as amended, and all claims dependent therefrom (specifically, pending claims 2-5 and 8-14), cannot be anticipated by Bennett et al. under 35 U.S.C. § 102(e). Accordingly, this ground of rejection should be withdrawn.

With respect to claim 15, and the remaining claims dependent therefrom that stand rejected as anticipated by Bennett et al. (claims 16 and 17; see paragraph 2 of the Action), the Action itself concedes, in paragraph 16 thereof, that Bennett et al. fails to specifically disclose that the searchable data information includes stored prescription-related information. The Action further concedes, in paragraph 17 thereof, that Bennett et al. fails to disclose that the select information comprises a list of prescription related terms such that the matching data contains prescription related data. Claim 15, as presently amended, now recites that the searchable data information includes stored prescription-related information and that the select information comprises a list of prescription related terms such that the matching data contains prescription related data. Because Bennett et al., by the Action's own admission, does not disclose those two claimed features, claim 15 as amended, and all claims dependent therefrom (specifically, pending claims 16 and 17) cannot be anticipated by Bennett et al. under 35 U.S.C. § 102(e). Accordingly, this ground of rejection should be withdrawn.

With respect to claim 21, and the remaining claims dependent therefrom that stand rejected as anticipated by Bennet et al. (claims 22-28; see paragraph 3 of the Action), claim 21

has been amended to recite that the user interface containing specific workflow renderings of the speech in lists of viable form with one second or less recognition timings. Bennett et al. discloses "short latency periods of three to five seconds (ideally – ignoring transmission latencies which can vary) for responding to a speech-based query." Col. 12, lines 33-36. The teachings of the present invention cut that time by a factor of about 67%. Bennett et al. neither contemplates nor teaches one second or less recognition timings. Therefore, claim 21 as amended, and all claims dependent therefrom (specifically, pending claims 22-28) cannot be anticipated by Bennett et al. under 35 U.S.C. § 102(e). Accordingly, this ground of rejection should be withdrawn.

For the reasons set forth above, the rejections under 35 U.S.C. § 102(3) of claims 2 and 27 (paragraph 4 of the Action), claims 3 and 17 (paragraph 5 of the Action), claim 5 (paragraph 6 of the Action), claims 8 and 3 (paragraph 7 of the Action), claims 9, 11, 23 and 25 (claim 8 of the Action), claim 14 (paragraph 8 of the Action), claim 16 (paragraph 10 of the Action), and claim 22 (paragraph 12 of the Action) are also not sustainable and should be withdrawn. The rejection under 35 U.S.C. § 102 of claim 18 (paragraph 11 of the Action) is rendered moot by the cancellation of that claim.

### **Claim Rejections Under 35 U.S.C. § 103**

Claims 4, 10, 12, 24 and 26 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bennett et al. in view of Kanevsky et al. (U.S. Patent No. 5,953,700).

According to the Manual of Patent Examining Procedures ("MPEP"), Section 2141:

"When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:  
(A) The claimed invention must be considered as a whole;  
(B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;  
(C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and  
(D) Reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986)."

The Action, in paragraph 13, alleges that claim 4 is obvious over Bennett et al. (which the Action concedes does not teach an automatic speech recognition engine) in view of Kanevsky et al. (which the Action alleges teaches an automatic speech recognition engine). Paragraph 14 of the Action alleges that claims 10 and 12 (among others) is obvious over the same combination, conceding that Bennett et al. fails to teach a server application having an encryption mechanism for encrypting the first data stream, to provide private and secure stream transmission to the

connected client server and a decryption mechanism for decrypting the received data stream. Kanevsky alleges teaches such an encryption/decryption mechanism.

Claims 4, 10 and 12, which depend upon amended claim 1, all require a server having business logic enabling the user to write prescriptions electronically, a searchable data element comprising stored prescription related information, wherein the wireless voice activated data retrieval system is configured to enable prescription data retrieval and write a prescription electronically.

Neither Bennett et al. or Kanevsky et al. teach, or suggest, a server having business logic enabling the user to write prescriptions electronically, a searchable data element comprising stored prescription related information, wherein the wireless voice activated data retrieval system is configured to enable prescription data retrieval and write a prescription electronically.

The Action, in paragraph 15, alleges that Kirk et al. (U.S. Patent No. 5,390,238) teaches that the server has business logic enabling the user to write prescriptions electronically. The Action, in paragraph 16, alleges that Brynstad (U.S. Patent No. 5,908,383) teaches a database containing prescription related information. None of the cited art teaches a wireless voice activated data retrieval system configured to enable prescription data retrieval and write a prescription electronically.

The Action has provided no rational basis for combining the teaches of Bennett et al. with any of the other cited art, except to argue without support that the various pieces of cited art "are analogous art because they are from the same field of endeavors." The MPEP mandates that the teachings of the cited art "must suggest the desirability and thus the obviousness of making the combination." MPEP, § 2141. The MPEP further mandates that "[t]he references must be viewed without benefit of impermissible hindsight vision afforded by the claimed invention." Id.

None of the cited art suggests the desirability of making a wireless voice activated data retrieval system configured to enable prescription data retrieval and write a prescription electronically, which system has a server having business logic enabling the user to write prescriptions electronically and a searchable data element comprising stored prescription related information. The only way to arrive at the combination of Bennett et al., Kanevsky et. al, Kirk et al. and Brynstad is to use the benefit of impermissible hindsight vision afforded by the claimed invention.

Most importantly, and most critical to the Action's impermissible hindsight analysis, is the fact that Bennett et al. nowhere teaches the desirability of using the system disclosed therein for the purpose of writing a prescription electronically. Indeed, the words "prescription," "pharmacy," "pharmacist," "medication," or "drug" appear nowhere in the text of Bennett et al. There is no contemplation in Bennett et al. for using the system disclosed therein in such a

context. Accordingly, Bennett et al. cannot be used to suggest the desirability of combining the teachings of any of the cited art to arrive at the instant claimed combinations.

Kanevsky et al. suffers from the same defects. There is no teaching of the desirability of using the system disclosed therein for the purpose of writing a prescription electronically. The words missing in the Bennett et al. teaching likewise cannot be found in Kanevsky et al.

Kirk et al. does not teach the desirability of a wireless voice activated data retrieval system. The words "wireless" or "voice activated" are not found in the text of Kirk et al. In fact, the word "prescription" is not found in Kirk et al., despite the fact that the Action alleges that Kirk et al. "teach that the server has business logic enabling the user to write prescriptions electronically."

Brynjestad likewise offers no teachings concerning the desirability of a wireless voice activated data retrieval system. As with Kirk et al., the words "wireless" or "voice activated" are not found in the text. Simply put, the cited art simply represents an impermissible accumulation of patents based on hindsight vision. Even assuming for the sake of argument that the cited art is all analogous art (an assumption that the applicants do not make and do not agree with), that assumption is insufficient to permit the cited art to be combined to allege that the instant invention is obvious.

For the reasons stated above, the rejection under 35 U.S.C. § 103 of claims 4, 10 and 12 are not sustainable and should be withdrawn. The rejection under 35 U.S.C. § 103 of claims 6-7 and 19-20 and 7 are rendered moot by the cancellation of those claims.

Claims 24 and 26 stand rejected over the Action's allegations that those claims are obvious over Bennett et al. (which the Action concedes does not teach an automatic speech recognition engine) in view of Kanevsky et al. (which the Action alleges teaches an automatic speech recognition engine). Claim 28 stands rejected over the Action's allegations that it is obvious over Bennett et al. (which the Action concedes does not disclose an indicating application capable of indicating the beginning of a voice transmission recording) in view of Cidon et al., U.S. Patent No. 6,269,330, which the Action alleges teaches such an indicating application.

Claims 24, 26 and 28, all of which depend from claim 21, require that the user interface containing specific workflow renderings of the speech in lists of viable form with one second or less recognition timings. There is no teaching or suggestion in any of the cited art concerning such a feature. Furthermore, the cited art does not provide any teachings concerning the desirability of a voice recognition device for providing wireless communication with a connected client-server having the features of the claimed invention. Kanevsky et al. does not contain the words "wireless" or "voice recognition."

Appl. No. 09/863,996

Amdt. dated: 10/22/2004

Reply to Office Action of April 22, 2004

Bennett et al., the Action concedes, does not discuss either the desirability of an encryption/decryption mechanism or an indicating application capable of indicating the beginning of a voice transmission recording. Cidon et al. does not, as the Action alleges, teach an indicating application capable of indicating the beginning of a voice transmission recording, but rather describes "parameters that may be used to set the contents of the packets, such as flags which indicate the beginning and end of a stream." The packets are nowhere defined in Cidon et al. as a voice transmission recording. Indeed, the phrase "voice recognition" is not found in the Cidon et al. specification. Cidon et al. therefore cannot be combined with Bennett et al. because the art itself does not provide any motivation to arrive at the invention.

For the reasons stated above, the rejection under 35 U.S.C. § 103 of claims 24, 26 and 28 are not sustainable and should be withdrawn.

Accordingly, in view of all of the above amendments and arguments, this application is now believed to be in condition for allowance. Early notice to this effect is earnestly solicited.

Appl. No. 09/863,996  
Amdt. dated: 10/22/2004  
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Accordingly, it is respectfully submitted that the claims, as amended, define patentable subject matter over the references of record.

Respectfully submitted,

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Doc #:CHI01 (333288-00100) 50236151v1;10/22/2004/Time:16:37